

Wasteland: How Old Insurance Policies Can Be Used For Cleanup Costs

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This month's issue of *National Geographic* includes an interesting article and interactive map regarding the status of investigation and clean-up of Superfund sites throughout the country. See [Paul Voosen, "Wasteland", *National Geographic* \(Dec. 2014\)](#). *NG* reports that treatment of site contamination is ongoing but incomplete at more than 1,160 sites, and another 95 sites remain uncontrolled. *NG* observes that "Money remains a constant problem" because the Superfund is nearly depleted. The Superfund taxes on crude oil and chemicals expired in 1995, and so the program has had to increasingly rely on general tax appropriations and recovery from responsible parties. The *NG* article's scope was limited to Superfund sites, and so did not address the numerous additional "Brownfield" sites around the nation that are not on the Superfund list but nevertheless are considered by state, local and municipal agencies to pose a hazard. And at the national level, recent EPA developments relating to vapor intrusion and the appropriate clean-up levels for TCE may lead to further investigation and clean-up costs at not only existing Superfund sites, but also sites where remediation was thought to be completed.

An often-overlooked source of funding for site investigation and cleanup is the general liability insurance coverage of now-defunct businesses that historically operated, owned or are otherwise responsible for contamination at the site. By law, a business' bankruptcy or insolvency typically does not relieve its insurers of their obligation to pay the business' liabilities. Although the business may appear insolvent, its insurance may continue to be a viable asset to remedy the contamination. If the right strategies are pursued, all or a significant portion of site investigation and clean-up costs might be recovered from the business' old insurance policies.

Because groundwater contamination from a site often occurs for decades before it is discovered, the proceeds under the multiple insurance policies in effect during that time might be aggregated, and the proceeds could increase exponentially at sites (e.g., municipal landfills) with multiple responsible parties. The result could be millions of dollars available for site investigation and cleanup costs, even when many of the responsible parties appear to be defunct small businesses.

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